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12 ABS BY ALLEN SCHWARTZ;
13 HARMONY COLLECTION, LLC;
14 APPAREL VENTURES, INC.; and
15 MANHATTAN BEACHWEAR, INC.

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UNICOLORS, INC., a California
corporation,

Plaintiff,

vs.

ABS BY ALLEN SCHWARTZ, *et al.*,
Defendants.

Case No. CV12-05471 RGK (RNBx)

Hon. Gary Klausner Presiding

**~~[PROPOSED]~~ PROTECTIVE
ORDER**

DEFINITIONS

1. As used in this Protective Order,
 - a. “Designating Party” means any Person who designates Material as Confidential Material.
 - b. “Discovering Counsel” means counsel of record for a Discovering Party.
 - c. “Discovering Party” means the Party to whom Material is being Provided by a Producing Party.

1 d. "Confidential Material" refers to those materials designated as
2 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" as defined in Paragraph 2
3 below.

4 e. "Material" means any document, testimony or information in
5 any form or medium whatsoever, including, without limitation, any written or
6 printed matter, Provided in this action by a Party before or after the date of this
7 Protective Order.

8 f. "Party" means the Parties to this action, their attorneys of record
9 and their agents.

10 g. "Person" means any individual, corporation, partnership,
11 unincorporated association, governmental agency, or other business or
12 governmental entity whether a Party or not.

13 h. "Producing Party" means any Person who Provides Material
14 during the course of this action.

15 i. "Provide" means to produce any Material, whether voluntarily
16 or involuntarily, whether pursuant to request or process.

17 **CONFIDENTIAL DESIGNATION**

18 2. A Producing Party may designate as "CONFIDENTIAL" any material
19 provided to a Party which contains or discloses any of the following:

20 a. Non-public insider information, personnel files, financial
21 information, trade secrets, confidential commercial information, proprietary
22 information, or other confidential or sensitive information which the Producing
23 Party determines in good faith should be kept confidential; and

24 b. Information that the Party is under a duty to preserve as
25 confidential under an agreement with or other obligation to another Person.

26 c. The Producing Party may designate as "ATTORNEYS' EYES
27 ONLY," documents Parties contend contain or disclose materials which they in
28 good faith believe to be of an extremely high degree of current commercial

1 sensitivity and/or would provide a competitive advantage to the Parties in this case
2 if disclosed.

3 3. A Producing Party shall stamp as CONFIDENTIAL or ATTORNEYS'
4 EYES ONLY Materials which the Producing Party in good faith believes are
5 entitled to protection pursuant to the standards set forth in Paragraph 2 of this
6 Order. A Producing Party may designate Confidential Material for Protection under
7 this order by either of the following methods:

8 a. By physically marking it with the following inscription prior to
9 Providing it to a Party:

10 CONFIDENTIAL or
11 ATTORNEYS' EYES ONLY

12 b. By identifying with specificity in writing to the Discovering
13 Party any previously Provided Material which was not designated as Confidential
14 Material prior to its having been Provided. For purposes of this method of
15 designation, it will be a sufficiently specific identification to refer to the bates
16 numbers or deposition page numbers of previously Provided Material. Where a
17 Producing Party designates previously Provided Material as Confidential Material
18 pursuant to this subparagraph, the Producing Party will follow the procedures set
19 forth in the previous subparagraph for designating Confidential Material, and
20 Provide to the Discovering Party additional copies of the previously Provided
21 Material marked with the inscription described in the previous subparagraph. Upon
22 receipt of the additional copies which comply with the procedures set forth in the
23 previous subparagraph, the Discovering Party will immediately return to the
24 Producing Party the previously Provided Material, or alternatively, will destroy all
25 the previously Provided Material, at the option of the Producing Party. For
26 previously Provided Material which was not designated as Confidential Material at
27 the time of its being Provided, this Protective Order shall apply to such materials
28 beginning on the date that the Producing Party makes such designation.

1 All costs associated with the designations of materials as “Confidential” or
2 “Attorneys’ Eyes Only” involving, for example, the cost of binding confidential
3 portions of deposition transcripts, shall be initially borne by the Party making the
4 designation with no prejudice regarding the Designating Party’s ability to recover
5 its costs upon completion of the litigation.

6 The designation of documents as “Confidential” or “Attorneys’ Eyes Only”
7 does not entitle the parties to have those documents filed under seal. An
8 application, including a stipulated application to filed documents under seal must
9 comply with Local Rule 79-5.

10 **RESTRICTION ON USE OF CONFIDENTIAL MATERIAL**

11 4. Confidential Material designated as CONFIDENTIAL shall not be
12 disclosed, nor shall its contents be disclosed, to any person other than those
13 described in Paragraph 7 of this Protective Order and other than in accordance with
14 the terms, conditions and restrictions of this Protective Order. Confidential Material
15 designated as ATTORNEYS’ EYES ONLY shall not be disclosed, nor shall its
16 contents be disclosed to any person other than those described in Paragraph 8 of
17 this Protective Order.

18 5. Confidential Material Provided by a Producing Party to a Discovering
19 Party shall not be used by the Discovering Party or anyone other than the Producing
20 Party, specifically including the persons identified in Paragraphs 7 or 8 as
21 appropriate, for any purpose, including, without limitation any personal, business,
22 governmental, commercial, publicity, public-relations, or litigation (administrative
23 or judicial) purpose, other than the prosecution or defense of this action.

24 6. All Confidential Material shall be kept secure by Discovering Counsel
25 and access to Confidential Material shall be limited to persons authorized pursuant
26 to Paragraphs 7 or 8 of this Protective Order.

27 7. For purposes of the preparation of this action, and subject to the terms,
28 conditions, and restrictions of this Protective Order, Discovering Counsel may

1 disclose Material designated as CONFIDENTIAL and the contents of Material
2 designated as CONFIDENTIAL only to the following persons:

3 a. Counsel of record working on this action on behalf of any party
4 and counsel's employees who are directly participating in this action, including
5 counsel's partners, associates, paralegals, assistants, secretaries, and clerical staff.

6 b. In-house counsel and such in-house counsel's employees who
7 are directly participating in this action, including counsel's paralegals, assistants,
8 secretaries, and clerical staff.

9 c. Court and deposition reporters and their staff.

10 d. The Court and any Person employed by the Court whose duties
11 require access to Material designated as CONFIDENTIAL.

12 e. Witnesses at depositions or pre-trial proceedings, in accordance
13 with procedures set forth in Paragraphs 11-13.

14 f. Non-party experts and consultants assisting counsel with respect
15 to this action and their secretarial, technical and clerical employees who are actively
16 assisting in the preparation of this action, in accordance with the procedures set
17 forth in Paragraphs 11-13.

18 g. Officers, directors and employees of the Parties hereto who have
19 a need to review Material designated as CONFIDENTIAL to assist in connection
20 with this litigation, subject to the limitations set forth herein;

21 h. Photocopy service personnel who photocopied or assisted in the
22 photocopying or delivering of documents in this litigation;

23 i. Any Person identified on the face of any such Material
24 designated as CONFIDENTIAL as an author or recipient thereof;

25 j. Any Person who is determined to have been an author and/or
26 previous recipient of the Material designated as CONFIDENTIAL, but is not
27 identified on the face thereof, provided there is prior testimony of actual authorship
28 or receipt of the Material designated as CONFIDENTIAL by such Person; and

1 k. Any Person who the Parties agree in writing may receive
2 Material designated as CONFIDENTIAL.

3 The Parties shall make a good faith effort to limit dissemination of Material
4 designated as CONFIDENTIAL within these categories to Persons who have a
5 reasonable need for access thereto.

6 8. For purposes of the preparation of this action, and subject to the terms,
7 conditions, and restrictions of this Protective Order, the Discovering Counsel may
8 disclose confidential financial Material designated as ATTORNEYS' EYES
9 ONLY, and the contents of Material so designated, only to the following persons:

10 a. Counsel of record for the Parties to this action and counsel's
11 employees who are directly participating in this action, including counsel's
12 partners, associates, paralegals, assistants, secretarial, and clerical staff.

13 b. Court and deposition reporters and their staff.

14 c. The Court and any person employed by the Court whose duties
15 require access to Material designated as ATTORNEYS' EYES ONLY.

16 d. Witnesses at depositions or pre-trial proceedings, in accordance
17 with procedures set forth in paragraphs 11-13.

18 e. Experts and consultants assisting counsel with respect to this
19 action and their secretarial, technical and clerical employees who are actively
20 assisting in the preparation of this action, in accordance with the procedures set
21 forth in paragraphs 11-13.

22 f. Any Person identified on the face of any such Material
23 designated as ATTORNEYS' EYES ONLY as an author or recipient thereof; and

24 g. Any Person who is determined to have been an author and/or
25 previous recipient of the Material designated as ATTORNEYS' EYES ONLY, but
26 is not identified on the face thereof, provided there is prior testimony of actual
27 authorship or receipt of the Material designated as ATTORNEYS' EYES ONLY by
28 such Person; and

1 h. Any Person who the Parties agree in writing may receive
2 Material designated as ATTORNEYS' EYES ONLY.

3 **UNDERTAKING TO BE BOUND BY PROTECTIVE ORDER**

4 9. Before Discovering Counsel may disclose Confidential Material to any
5 Person described in subparagraphs 7(f), 7(g), or 8(e) above, the Person to whom
6 disclosure is to be made shall receive a copy of this Protective Order, shall read
7 Paragraphs 1, 4, 5, 6, 7, 8, 9 and 10 (including the subparagraphs where applicable)
8 of the Protective Order, shall evidence his or her agreement to be bound by the
9 terms, conditions, and restrictions of the Protective Order by signing an undertaking
10 in the form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the
11 copy of this Protective Order, with a copy of his or her signed Undertaking
12 attached. Discovering Counsel shall keep a copy of the signed Undertaking for each
13 person described in subparagraphs 7(f), 7(g), or 8(e) to whom Discovering Counsel
14 discloses Confidential Material.

15 10. The individuals designated in subparagraph 8(a) above, are specifically
16 prohibited from publishing, releasing, or otherwise disclosing Material designated
17 as ATTORNEYS' EYES ONLY, or the contents thereof, to any directors, officers,
18 or employees of the company for which the individual is employed, or to any other
19 persons not authorized under this Protective Order to receive such information. The
20 designated individuals in subparagraph 8(a) shall retain all ATTORNEYS' EYES
21 ONLY material in a secure manner under separate and confidential file, so as to
22 avoid inadvertent access by, or disclosure to, unauthorized persons.

23 **DEPOSITIONS**

24 11. Those portions of depositions taken by any Party at which any
25 Material designated as CONFIDENTIAL is used or inquired into, may not be
26 conducted in the presence of any Person(s) other than (a) the deposition witness, (b)
27 his or her counsel, and (c) Persons authorized under Paragraph 7 of this Protective
28 Order to view such Confidential Material. During those portions of depositions in

1 which Material designated ATTORNEYS' EYES ONLY is used or inquired into,
2 only those persons authorized under Paragraph 8 to view such Materials may be
3 present.

4 12. Counsel for any deponent may designate testimony or exhibits as
5 Confidential Material by indicating on the record at the deposition that the
6 testimony of the deponent or any exhibits to his or her testimony are to be treated as
7 Confidential Material. Counsel for any Party may designate exhibits in which that
8 Party has a cognizable interest as Confidential Material by indicating on the record
9 at the deposition that such exhibit(s) are to be treated as Confidential Material.
10 Failure of counsel to designate testimony or exhibits as confidential at deposition,
11 however, shall not constitute a waiver of the protected status of the testimony or
12 exhibits. Within thirty calendar days of receipt of the transcript of the deposition, or
13 thirty days of the date on which this Protective Order becomes effective, whichever
14 occurs last, counsel shall be entitled to designate specific testimony or exhibits as
15 Confidential Material. If counsel for the deponent or Party fails to designate the
16 transcript or exhibits as Confidential within the above-described thirty day period,
17 any other Party shall be entitled to treat the transcript or exhibits as non-confidential
18 material. For purposes of this Paragraph 12, this Protective Order shall be deemed
19 "effective" on the date on which it has been executed by all counsel for the Parties.

20 13. When Material disclosed during a deposition is designated
21 Confidential Material at the time testimony is given, the reporter shall separately
22 transcribe those portions of the testimony so designated, shall mark the face of the
23 transcript in accordance with Paragraph 3 above, and shall maintain that portion of
24 the transcript or exhibits in separate files marked to designate the confidentiality of
25 their contents. The reporter shall not file or lodge with the Court any Confidential
26 Material without obtaining written consent from the Party who designated the
27 Material as Confidential Material. For convenience, if a deposition transcript or
28 exhibit contains repeated references to Confidential Material which cannot

1 conveniently be segregated from non-confidential material, any Party may request
 2 that the entire transcript or exhibit be maintained by the reporter as Confidential
 3 Material.

4 **USE OF CONFIDENTIAL MATERIAL IN PLEADINGS AND OTHER**
 5 **COURT PAPERS**

6 14. In accordance with Local Rule 79-5.1, if any papers to be filed with
 7 the Court contain information and/or documents that have been designated as
 8 “Confidential” or “Attorneys’ Eyes Only,” the proposed filing shall be
 9 accompanied by an application to file the papers or the portion thereof containing
 10 the designated information or documents (if such portion is segregable) under seal;
 11 and the application shall be directed to the judge to whom the papers are directed.
 12 For motions, the parties shall publicly file a redacted version of the motion and
 13 supporting papers.

14 **OBJECTIONS TO DESIGNATION**

15 15. Any Party may at any time notify the Designating Party in writing of
 16 its contention that specified Material designated as Confidential Material is not
 17 properly so designated because such Material does not warrant protection under
 18 applicable law. The Discovering Party shall within five court days, meet and confer
 19 in good faith with the Designating Party in an attempt to resolve such dispute. The
 20 Discovering Party shall have ten (10) calendar days from the initial meet and confer
 21 to file a motion to uphold the designation of the material in question. Any such
 22 motion shall be set for hearing on the first available calendar date. If no motion is
 23 filed within 10 days, or any mutually agreed to extension of time, all Parties may
 24 treat the Material as non-confidential. To maintain the designation as Confidential
 25 Material and to prevail on such a motion, the Discovering Party must show by a
 26 preponderance of the evidence that there is good cause for removing or modifying
 27 the original designation. Pending resolution of any motion filed pursuant to this
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Paragraph, all Persons bound by this Protective Order shall continue to treat the Material which is the subject of the motion as Confidential Material.

16. Any discovery disputes concerning the designation of materials or disclosure of documents or information under this Protective Order shall be brought in compliance with Local Rule 37 and a proposed stipulated protective order should so provide.

RETURN OF MATERIAL

17. Within ninety (90) calendar days after the final settlement or termination of this action, Discovering Counsel shall return or destroy (at the option and expense of Discovering Counsel) all Materials provided by a Producing Party and all copies thereof except to the extent that any of the foregoing includes or reflects Discovering Counsel's work product, and except to the extent that such Material has been filed with a court in which proceedings related to this action are being conducted. In addition, with respect to any such retained work product and unless otherwise agreed to, at the conclusion of this action, counsel for each Party shall store in a secure area all work product which embodies Confidential Material together with all of the signed undertakings they are required to preserve pursuant to Paragraph 9 above, and shall not make use of such Material except in connection with any action arising directly out of these actions, or pursuant to a court order for good cause shown. The obligation of this Protective Order shall survive the termination of this action. To the extent that Confidential Materials are or become known to the public through no fault of the Discovering Party, such Confidential Materials shall no longer be subject to the terms of this Protective Order. Upon request, counsel for each Party shall verify in writing that they have complied with the provisions of this paragraph.

SCOPE OF THIS ORDER

18. Except for the provisions regarding post-trial or post-settlement return and destruction of Material, or segregation of work product which embodies

1 Confidential Material, this order is strictly a pretrial order; it does not govern the
2 trial in this action.

3 19. Not later than seven days before trial in the action, Counsel agree to
4 meet and confer concerning the use at trial of Confidential Material.

5 20. Nothing in this Protective Order shall be deemed to limit, prejudice, or
6 waive any right of any Party or Person (a) to resist or compel discovery with respect
7 to, or to seek to obtain additional or different protection for, Material claimed to be
8 protected work product or privileged under California or federal law, Material as to
9 which the Producing Party claims a legal obligation not to disclose, or Material not
10 required to be provided pursuant to California law; (b) to seek to modify or obtain
11 relief from any aspect of this Protective Order; (c) to object to the use, relevance, or
12 admissibility at trial or otherwise of any Material, whether or not designated in
13 whole or in part as Confidential Material governed by this Protective Order; or (d)
14 otherwise to require that discovery be conducted according to governing laws and
15 rules.

16 21. Designation of Material as Confidential Material on the face of such
17 Material shall have no effect on the authenticity or admissibility of such Material at
18 trial.

19 22. This Protective Order shall not preclude any Person from waiving the
20 applicability of this Protective Order with respect to any Confidential Material
21 Provided by that Person or using any Confidential Material Provided by that Person
22 or using any Confidential Material owned by that Person in any manner that Person
23 deems appropriate.

24 23. This Protective Order shall not affect any contractual, statutory or
25 other legal obligation or the rights of any Party or Person with respect to
26 Confidential Material designated by that Party.

27 24. The restrictions set out in the Protective Order shall not apply to any
28 Material which:

- 1 a. At the time it is Provided is available to the public;
- 2 b. After it is Provided, becomes available to the public through no
- 3 act, or failure to act, of the Discovering Party; or
- 4 c. The Discovering Party can show
 - 5 i. Was already known to the Discovering Party
 - 6 independently of receipt of the Confidential Material in this or prior litigation; or
 - 7 ii. Was received by the Discovering Party, after the time it
 - 8 was designated as Confidential Material hereunder, from a third party having the
 - 9 right to make such disclosure.

10 25. If at any time any Material protected by this Protective Order is
 11 subpoenaed from the Discovering Party by any Court, administrative or legislative
 12 body, or is requested by any other Person or entity purporting to have authority to
 13 require the production of such material, the Party to whom the subpoena or other
 14 request is directed shall immediately give written notice thereof to the Producing
 15 Party with respect to Confidential Material sought to afford the Producing Party the
 16 ability to take appropriate legal action to prevent disclosure of the Confidential
 17 Material. The Discovering Party will comply with any subpoena unless and until the
 18 Producing Party has taken appropriate legal action to prevent disclosure of the
 19 Confidential Material. The Discovering Party's compliance with any subpoena
 20 shall in no way violate this Protective Order unless and until the Producing Party
 21 has taken appropriate legal action to prevent disclosure of the Confidential
 22 Material. Nothing contained in this paragraph is intended to be construed as
 23 authorizing or encouraging a Party in this action to disobey a lawful subpoena
 24 issued in another action or a lawful order issued by another court or by an
 25 administrative or legislative body.

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SUBMISSION TO COURT

26. The Parties agree to submit this Protective Order to the Court for adoption as an order of the Court. The Parties reserve the right to seek, upon good cause, modification of this Protective Order by the Court.

IT IS SO ORDERED.

Date: January 15, 2013



Honorable Robert N. Block
**United States Magistrate
Judge**

EXHIBIT A

UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its
entirety and understand the Protective Order that was issued by the United States
District Court for the Central District of California in the case of *Unicolors, Inc.*
ABS by Allan Schwartz, No. CV12-05471 RGK (RNBx). I agree to comply with
and to be bound by all the terms of this Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Protective Order to any
person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Central District of California for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

Date: _____, 2013

City and State where sworn and signed: _____

Signed: _____
[Print Name] [Signature]

